

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 281/2000

Date of Decision : 23-4-03

Shri N.M.Ganguli Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.S.Masurkar Advocate for the Respondents

CORAM :

The Hon'ble Shri A.S.Sanghvi, Member (J)

The Hon'ble Shri Shankar Prasad, Member (A)

(i) To be referred to the reporter or not ? [✓]
(ii) Whether it needs to be circulated to other Benches of the Tribunal ? [✓]
(iii) Library

(A. S. SANGHVI)
MEMBER (J)

mci.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.281/2000

Dated this the 23 day of April 2003.

CORAM : Hon'ble Shri A.S.Sanghvi, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

Naresh Baldeo Pandit,
R/at 9, Vrindavan,
Wamanrao Sawant Road,
Dahisar (East),
Mumbai.

...Applicant

By Advocate Shri N.M.Ganguli

vs.

1. Union of India
through The Director General
of Works, Central Public Works
Department, Nirman Bhawan,
New Delhi.

2. The Superintending Engineer,
Coordination Circle (Western
Zone), Central P.W.D.,
New C.G.O.Bldg., 3rd Floor,
New Marine Lines,
Mumbai.

3. The Executive Engineer (Electrical),
Mumbai Central Electrical Dn.No.1,
Central P.W.D. Botawala Chambers,
1st Floor, Sir P.M.Road,
Fort, Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-

ORDER (ORAL)

{Per : Shri A.S.Sanghvi, Member (J)}

The applicant has approached this Tribunal with a grievance that though he is working in the cadre of Serviceman, he has been regularised as Khalasi. According to the applicant, he is required to be regularised as Serviceman and not as Khalasi. The case of the applicant is that he has joined service of the respondents in the year 1983 after his name was sponsored by Employment Exchange and being a qualified man, he has been working as Serviceman since 1990. The respondents have issued Circulars subsequently requiring to appear for the Trade Test. He has appeared for the Trade Test and on his clearing the Trade Test, he was appointed as Serviceman. According to him, his name was also shown as Serviceman Work-charge staff as on 1.1.1990. The contention of the applicant is that inspite of his working as serviceman, the respondents have regularised him as Khalasi. He has contended that he has been working as Serviceman and was entitled to be regularised in the same post as per the directions issued by the Respondent No.1. He has therefore submitted that regularising him as Khalasi is in contravention of the directions issued by Respondent No.1 in this regard and has prayed that the same be quashed and set aside and the respondents be directed to regularise him as Serviceman w.e.f. 30.12.1992.

2. The respondents, on the other hand, contended inter alia that the OA. is barred by limitation, delay and laches and that the applicant is not entitled to be regularised on the post of Serviceman. They have also denied that the applicant had worked only on the post of Serviceman. They have also contended that the regularisation of a NMR worker in the same category in which he is working is to be done subject to availability of vacancies in that category, otherwise he may be considered for absorption against a post in the lower skill in the same trade. The post in which the applicant was working viz. Serviceman was not the lowest post in the same trade. Due to non-availability of vacancies in the said trade of serviceman, he was considered for absorption in a lower post i.e. Khalasi and the applicant had also accepted the offer of appointment to said post and that too unconditionally. The applicant was offered the post of Khalasi as there was no vacancy in the post of Serviceman and he could not be kept waiting for want of vacancies. The applicant had accepted the same and after 1992 he had continued to work as Khalasi. He has passed the Trade Test for the post of Serviceman only in 1995. Passing of trade test is a pre-requisite for regularisation. He represented for the first time on 7.8.1999 and immediately filed the present OA. They have contended that once the applicant has accepted the post, he cannot now be heard to say that he could not have been regularised in the post of Khalasi.

3. We have heard the learned counsel for both the parties and duly considered the rival contentions.

4. Apart from the question of OA. being barred by limitation and delay and laches, we find that the applicant has no case on merit. The applicant has maintained that he was appointed as Serviceman and had continued to work as Serviceman since the inception but has not adduced any evidence that he was in fact appointed as Serviceman. The respondents have considered the case of the applicant for absorption in the post of Serviceman but according to them since no vacancy was available for absorption in the post of Serviceman, the applicant was offered the post of Khalasi. Annexure to Sept.'92 order (R-5) indicates it has not been allotted to West Zone. The applicant had even accepted that offer (R-1). It is pertinent to note that this proposal was made in 1992 and the applicant was regularised as Khalasi in the year 1992. The applicant had never protested against his regularisation as Khalasi in the year 1992 and thereafter till he sent a representation in the year 1999. He has passed the Trade Test in 1995 and passing of trade Test is a pre-condition. It is quite obvious that once having accepted the post of Khalasi and having worked on that post for a period of more than 7 years, the applicant can not be heard to say that his regularisation in the post of Khalasi is illegal, unreasonable and unjustified. He is estopped from challenging the regularisation in the post of Khalasi.

5. We have, therefore, no hesitation in concluding that the OA. is devoid of any merit and deserves to be rejected. We also find that the same is barred by limitation as the cause of action for filing this OA. had arised in the year 1992 and the applicant has filed this OA. in the year 2000 without explaining the delay in filing the OA. or without moving any application for condoning the delay. The OA. is therefore not maintainable. The OA. is therefore rejected with no order as to costs.

Shankar Prasad
(SHANKAR PRASAD)

MEMBER (A)

A. S. Sanghvi
(A. S. SANGHVI)

MEMBER (J)

mrj.